

RESPONSE IN THE MATTER OF COMPLAINT KNUDSON V. WOLFE

The Complaint of Dean Knudson, Complainant
against
Meagan Wolfe, Respondent

Wisconsin Elections Commission
Represented by
Deborah C. Meiners
DeWitt LLP
Two East Mifflin Street, Suite 600
Madison, WI 53703

February 5, 2021

1. I am in receipt of correspondence from Deborah Meiners dated December 22, 2020 regarding her decision to grant an extension for the Respondent to file her response to my complaint.
2. Respondent Wolfe is a state official under Wisconsin law serving as the Administrator of the Wisconsin Elections Commission as well as the state's Chief Election Officer under Wis. Stat. 5.05(3g).
3. This complaint is filed under Wis. Stat. 5.06 with the intent to require that Administrator Wolfe conform her future conduct in compliance with state law.
4. Respondent Wolfe is not however a local election official but instead a state election official.
5. Wisconsin Administrative Code as currently published states that Chapter EL 20 has been superseded by Wis.Stat. 5.05(2m) stating: "Chapter EL 20 has been superseded by s. 5.05 (2m), Wis. Stat., and is no longer effective, except for complaints alleging a violation of election laws by a local election official under s. 5.06, Wis. Stat." Respondent is not a local election official.
6. Wisconsin statutes must always supersede administrative procedures, administrative precedents, and the Wisconsin Administrative Code in cases where there exists a conflict.
7. I did not consent to the request by the Respondent for an extension of time to file a response.
8. The statute governing the general authority, powers and duties of the Wisconsin Elections Commission contains s. 5.05(2m)(c)2.a Wis.Stat. and which states: "Any person may file a complaint with the commission alleging a violation of chs. 5 to 10 or 12. No later than 5 days after receiving a complaint, the commission shall notify each person who or which the complaint alleges committed such a violation. Before voting on whether to take any action regarding the complaint, other than to dismiss, the commission shall give each person receiving a notice under this subd. 2. a. an opportunity to demonstrate to the commission, in writing and within 15 days

after receiving the notice, that the commission should take no action against the person on the basis of the complaint.”

9. The complaint does contain allegations of violation of Chapter 5 to 10 or 12 as covered by s. 5.05, however this complaint was filed under s. 5.06 instead because the remedy sought is future compliance rather than criminal penalty. Despite the fact that this complaint is filed under s. 5.06, Administrative Code Chapter EL 20 does not apply but instead the statutory procedure laid out in s. 5.05(2m)(c)2.a Wis.Stat. must govern consideration of the complaint.
10. Respondent failed to respond to the complaint within the 15 days allowed under s. s. 5.05(2m)(c)2.a Wis.Stat.
11. Ms. Meiner does not have legal authority to grant an extension of the time to file a response to this complaint.
12. No verified response was received within the 15 days allowed under law.
13. The failure to respond timely to the complaint means the response by the Respondent must be disregarded. The Respondent should be deemed to have admitted the allegations contained in the complaint.
14. Notwithstanding the foregoing arguments, and particularly if the Commission or any other court rejects the foregoing, I assert my right to have the following response entered into the record and considered by the Commission and any future court proceeding.
15. A formal delegation document has been adopted by the Commission delegating to the Administrator certain statutory powers and duties of the Commission.
16. Respondent claims that certain duties and responsibilities granted by law to the Elections Commission are merely ministerial functions that the legislature could not have intended to be handled by the full Commission. Despite the existence of the formal delegation document, Respondent claims that many other duties, presumably at her discretion, may be considered ministerial in nature.
17. The legislature created the Administrator position. The legislature made the Administrator, or Interim Administrator, the Chief Election Official of the state. The legislature created the Commission and defined the Commission as the six appointed commissioners.
18. It is inconceivable that the legislature meant to grant powers to the Administrator that are specifically granted in statute to the full Commission. The legislature could have easily specified the Administrator instead of the Commission in regard to certain duties.
19. The existence of the delegation of authority document proves that the Commission is aware that certain duties are suitable for delegation. The delegation document allows the Administrator and

her staff to perform ministerial duties in a timely manner. The Commission could add further duties to the document. A strong case could be made that the Commission should do so, but the Administrator must not unilaterally claim these powers on her own using her discretion about which undelegated duties are solely ministerial.

20. Respondent claims that s. 7.70(5)(b) stands alone and must be considered separate and unrelated to s. 7.70(5)(a) Wis. Stat.
21. I dispute this claim because the certificate of ascertainment sent to Governor Evers, and to previous Governors, has been signed by the Secretary of State as required in s. 7.70(5)(a). This action is in compliance with s. (a) and not required in s. (b).
22. Respondent claims that the statutory requirement in s. (a) to wait before issuing an election certificate until the time allowed for filing an appeal of a recount has passed does not apply to presidential elections. Wis. Stat. 7.70(5)(a) includes the language: "When a valid petition for recount is filed, the commission chairperson or the chairperson's designee may not certify a nomination, and the governor or commission may not issue a certificate of election until the recount has been completed and the time allowed for filing an appeal has passed, or if appealed until the appeal is decided."
23. Wisconsin Statutes were clearly constructed to put state law in accordance with federal law as adopted in 3 U.S. Code § 6. Subsection 6 contains both a primary and secondary provision for the role of the Governor in signing the certificate prepared by the Commission.
24. First, the subsection states in part: "It shall be the duty of the executive of each State, as soon as practicable after the conclusion of the appointment of the electors in such State by the final ascertainment, *under and in pursuance of the laws of such State providing for such ascertainment*, to communicate by registered mail under the seal of the State to the Archivist of the United States a certificate of such ascertainment of the electors appointed... (emphasis added).
25. Respondent argues that the second part of subsection 6 renders the first meaningless. In the second part the subsection states in part: "... if there shall have been any final determination in a State in the manner provided for by law of a controversy or contest concerning the appointment of all or any of the electors of such State, it shall be the duty of the executive of such State, as soon as practicable after such determination, to communicate under the seal of the State to the Archivist of the United States a certificate of such determination in form and manner as the same shall have been made..."
26. As stated in the complaint, Respondent failed to wait for the recount to be completed, but waited only until the partial recount of two counties had been completed before preparing and sending the certificate to the Governor for his signature. State law allowed a period of time in which the candidates Biden and Harris could have petitioned for a complete recount.

27. Respondent claims the recount and appeals of the recount are to be considered as any other legal challenge to the election, i.e. as "controversy or contest concerning the appointment of electors", but in fact under Wisconsin law neither a certificate of election nor certificate of ascertainment should be completed and signed until the recount processes have been completed.
28. Respondent instead rushed to prepare and send a certificate of ascertainment to the Governor in violation of the law.
29. The delegation of authority grants Respondent the right to prepare election certificates but Respondent refers to the certificate sent to the Governor as a certificate of ascertainment, apparently trying to have it both ways. Either both the delegation of authority and s. 7.70(5)(a) apply because the certificate sent to Governor Evers is in fact a certificate of election, or the delegation does not apply because the certificate is a uniquely different document covered solely by s. 7.70(5)(b).

Date: February 5, 2021

Dean R Knudson

I, Dean Knudson, being first duly sworn on oath state that I personally read the above complaint, and that the above allegations are true based on my personal knowledge and, as to those stated on information and belief, I believe them to be true.

Dean R Knudson (complainant's signature)

STATE OF WISCONSIN

County of St Croix

Sworn to before me this 5 day of February, 2021

Maria Machtemes

(Signature of person authorized to administer oaths)

My commission expires 7/4/2021, or is permanent

Notary Public or (official title if not notary)

